

1 IN THE UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA,)
4 vs.) Case No. 1:13CR47-1
5 STANLEY SCOTT PORTER,) Greensboro, North Carolina
6 Defendant.) September 24, 2013
7) 11:01 a.m.

8 TRANSCRIPT OF SENTENCE - VOLUME 3
9 BEFORE THE HONORABLE WILLIAM L. OSTEEN, JR.
UNITED STATES DISTRICT JUDGE

10 APPEARANCES:

11 For the Government: FRANK JOSEPH CHUT, AUSA
12 Office of the U.S. Attorney
13 101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401

14 For the Defendant: DAVID B. FREEDMAN, Esq.
15 Crumpler Freedman Parker & Witt
16 301 N. Main Street, Suite 1100
Winston-Salem, North Carolina 27101

17
18
19
20
21
22 Court Reporter: Joseph B. Armstrong, RMR, FCRR
23 324 W. Market, Room 101
Greensboro, NC 27401

24 Proceedings reported by stenotype reporter.
25 Transcript produced by Computer-Aided Transcription.

P R O C E E D I N G S

(At 11:01 a.m., proceedings commenced.)

(Defendant present.)

MR. CHUT: Your Honor, this is United States of America versus Stanley Scott Porter, 1:13CR47-1, Mr. Freedman representing Mr. Porter on for a sentencing hearing, Your Honor.

THE COURT: All right. Well, it's kind of a resentencing hearing, but I think, as the parties know through the messages that I sent, that unfortunately I can't impose conditions of supervised release until after the term -- any term of imprisonment has been served, so I wanted to get everybody back here since it appeared that what I had imposed was not a lawful sentence. I still for myself personally was satisfied with that sentence. And as I further indicated substantively, in fairness to Mr. Porter and to the Government, I don't generally intend to make any substantive changes to the sentence.

But this is what I have wrestled with. The sentence was 24 months split 12 months active/12 months house arrest as a condition of the term of supervised release. I'm going to leave the long reporting date in place as I had it. I'm going to leave all other conditions of the sentence in place, but I think I've got to flip it around and make the 12 months house arrest or home detention as a condition of the supervised

1 release rather than directing or ordering that Mr. Porter serve
2 that before he reports for service of an active -- any active
3 component of his sentence.

4 So what I -- frankly, the only substantive change I'm
5 inclined to make is since he's going to be on pretrial release
6 for a year, I'm inclined to cut his term of supervised release
7 down to two years instead of three under these circumstances.
8 I'm also inclined under the circumstance -- I debated -- let me
9 back up. I debated whether to move that reporting date back
10 slightly to June instead of September. Whatever date I leave
11 for the reporting date, I'd also like to set a status
12 conference for about a month before that reporting date so the
13 parties can come in and update me as to where the case stands
14 in terms of any potential future cooperation or supervised 5(k)
15 filings and further investigation so that I'm not trying to
16 weigh that if I suddenly start getting motions to continue
17 because of cooperation, but on just a paper record I can
18 actually meet with the parties to find out where things stand
19 and figure out what should be done.

20 I do think -- I do think, at least under my
21 assessment, that -- give me just a moment. I do think because
22 the sentence itself was -- I'm using the term "unlawful," but
23 it was not permitted by statute -- by the applicable statutes,
24 but there is clear error here that I need to correct in the
25 sentence under Rule 35. So to take you through step-by-step

1 either under Rule 35 or Rule 36, a clerical error or oversight
2 or omission, I think the sentence is one that is subject to
3 being corrected. I don't intend to change the sentence
4 substantively, but in accordance with the applicable statutes
5 and rules with respect to supervised release, I am going to
6 flip it around so that the term of imprisonment starts in a
7 year, and then the home detention starts after service of the
8 active sentence component.

9 Mr. Freedman, any questions about anything that I've
10 outlined for you?

11 MR. FREEDMAN: No, Your Honor. I would have one
12 request in terms of the conditions of the house arrest. But
13 other than that, I have nothing.

14 THE COURT: Okay. Mr. Chut, anything?

15 MR. CHUT: No, Your Honor, thank you.

16 THE COURT: And for whatever it's worth, I did
17 wrestle with a variety of possibilities in the interim,
18 including active sentence on one count and probation on the
19 other count so I could structure it the way I wanted it to
20 be -- or I felt like it should be structured, and there's just
21 no way to do the home detention before the term of imprisonment
22 is served.

23 What was the question about the house arrest or home
24 detention?

25 MR. FREEDMAN: Your Honor, it's my understanding what

1 the Court was intending to do is while he's still out on
2 pretrial release, the Court was going to impose -- well, have
3 him under the conditions of house arrest.

4 THE COURT: I'm not --

5 MR. FREEDMAN: Oh, you're not?

6 THE COURT: No, I don't think I can. He can't -- I
7 can't structure that so he gets credit toward that during the
8 term of supervised release, so he's just going to remain out on
9 the same terms and conditions of release. I toyed with the
10 idea of going ahead and modifying those terms and conditions of
11 release, but I felt like that was problematic because, A, I
12 don't genuinely believe or find that he is at any increased
13 risk to the community or for failing to report; and, B, looking
14 at it candidly, I think we could run into some problems on
15 crediting that toward the 12 months house arrest as a condition
16 of supervised release.

17 So I'm going to leave him on the same -- or
18 Mr. Porter on the same terms and conditions of pretrial release
19 as were previously imposed from now through the reporting date.

20 MR. FREEDMAN: Then I don't need to be heard at all,
21 Your Honor.

22 THE COURT: Anything in light of that, Mr. Chut?

23 MR. CHUT: No, Your Honor, thank you.

24 THE COURT: Let me see Ms. Holly up here.

25 (Bench conference with probation.)

1 THE COURT: All right. How do we proceed from here?
2 This is my first go around on correcting a sentence under
3 Rule 35 or Rule 36, but I think it's sufficient at this point
4 to strike the conditions of the earlier judgment and simply
5 reimpose the 24 months as I did in the first instance. Is that
6 okay with you, Mr. Freedman?

7 MR. FREEDMAN: Yes, Your Honor.

8 THE COURT: Mr. Chut?

9 MR. CHUT: Yes, Your Honor.

10 THE COURT: And did you want to be heard on the
11 reduction in terms of the term of supervised release from three
12 years to two?

13 MR. CHUT: No, Your Honor, I do not.

14 THE COURT: All right. Then, Mr. Porter, if you will
15 stand, then I will simply find in Case No. 1:13CR47-1 that the
16 original sentence with respect to the active sentence component
17 as well as the condition of 12 months house arrest is struck
18 and is hereby modified. The sentence imposed shall be -- as --
19 well, as well as the term of supervised release, those matters
20 are modified to reflect the following:

21 One, a term of imprisonment of 24 months shall be
22 served as follows: Twelve months in the custody of the Bureau
23 of Prisons, as previously ordered, followed by a term of
24 supervised release of 24 months; and as a condition of that
25 supervised release, defendant is -- will serve a period of home

1 detention of 12 months under the terms and conditions that were
2 previously announced. There will not be any change to
3 Mr. Porter's pretrial conditions of release between now and the
4 time Mr. Porter reports for the active service of his sentence.
5 All other terms and conditions of the judgment previously
6 imposed will remain in full force and effect.

7 Anything further, Mr. Freedman?

8 MR. FREEDMAN: No, Your Honor.

9 THE COURT: Mr. Chut?

10 MR. CHUT: No, Your Honor. Thank you, Your Honor.

11 MS. HOLLY: Did you say 24 months imprisonment?

12 THE COURT: The way I did it the first time was 24
13 months, but I ordered, like a Zone B, how it was to be served
14 12 months active. Maybe it would be better just for clarity of
15 the record to just make it 12 months in the custody of the
16 Bureau of Prisons followed by a term of two years of supervised
17 release with a condition of 12 months home detention.

18 MS. HOLLY: Yes, sir. Yes, sir.

19 THE COURT: Okay. Well, I'll get this sentence right
20 eventually.

21 Now, certainly I know Mr. Porter is hopeful, and it
22 sounds like the Government is -- will -- at least acknowledges
23 that there's additional work unfolding -- you can have a seat
24 at this point if you would like, Mr. Porter -- there's
25 additional work unfolding that may lead to further motions by

1 the Government in this case. In light of that -- what did I
2 set as a reporting day? Was it like September 13 or 18th?

3 THE CLERK: The 17th.

4 THE COURT: The 17th of September. So I'm going to
5 say on August 16 of 2014, I'm going to set a status conference
6 for 2:00 in the afternoon at which -- at that point in time if
7 any cooperation is completed and a Rule 35 or some other
8 similar motion has been filed, the status -- I'm going to leave
9 the status conference in place, I take that back, because
10 there's one other issue I want to raise with you. I'm going to
11 set that case for a status conference at that time.

12 Mr. Chut and Mr. Freedman will decide then what's
13 going on within the case. If the Rule 35 has been filed, I'm
14 going to want to hear from you because, depending on where I
15 want to make reductions if the Government has so moved, I may
16 also want to consider conditions of home -- of the home
17 detention if that remains in place in light of any travel needs
18 that Mr. Porter may have.

19 I will tell you now, certainly everything can change,
20 but what I'm looking at is if ultimately the active sentence
21 component remains in place, then Mr. Porter is going to have to
22 make adjustments on his -- in the operations of his business to
23 accommodate that ultimately. But if a Rule 35 is filed,
24 depending on how much cut ultimately is done, it may be that in
25 light of the changes I may want to impose certain conditions of

1 home detention to allow those businesses to continue. So I'm
2 going to leave that status conference in place. We'll address
3 all that at that particular time.

4 Mr. Porter, I apologize to you. Everybody expects
5 judges to get things right on the first try, and sometimes it
6 just doesn't happen the way it should. I appreciate your
7 patience and your willingness to return. I appreciate
8 counsel's patience in the matter.

9 If there's nothing else to be addressed, we'll let it
10 go at that. Mr. Freedman, anything further?

11 MR. FREEDMAN: No, Your Honor.

12 MR. CHUT: No, Your Honor, thank you.

13 THE COURT: Ms. Holly?

14 MS. HOLLY: (Shaking head.)

15 THE COURT: All right. Thank you all. We'll stand
16 adjourned.

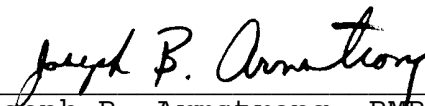
17 (At 11:15 a.m., proceedings concluded.)

18 * * * * *

19 C E R T I F I C A T E

20 I certify that the foregoing is a correct transcript
21 from the proceedings in the above-entitled matter.

22
23 Date: 05/27/2014

24 
25 Joseph B. Armstrong, RMR, FCRR
United States Court Reporter
324 W. Market Street
Greensboro, NC 27401